

REMARKS

In response to the Office Action mailed July 9, 2009 ("the Office Action"), Applicants respectfully request reconsideration and reexamination of this application, removal of the rejections outlined below, and the timely allowance of the pending claims.

Status of the Claims

Claims 1-30 were pending. The Office Action Summary included in the Office Action indicates that claims 1-30 are rejected. See Office Action Summary at I. (6).¹ Claims 1-30 remain pending for examination.

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 12, and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0193671 to Ciurczak et al. ("Ciurczak") in view of U.S. Patent No. 6,306,104 to Cunningham et al. ("Cunningham"). Office Action at p. 3. Claims 25, 27, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2005/0002483 to Wilcox et al. ("Wilcox") in view of Cunningham. *Id.* at p. 6. Applicants traverse these section 103(a) rejections and respectfully request withdrawal of the rejections for at least the following reasons.

¹ Applicants note that while the Office Action Summary indicates that claims 1-30 are rejected, the Office Action fails to provide a statement of the basis for rejection of claims 2-11, 13, 15-24, 26, and 28. Applicants invite the Examiner's attention to M.P.E.P. § 707.07(d), which states that "[w]here a claim is refused for any reason relating to the merits thereof... the ground of rejection [should be] fully and clearly stated[, and] [t]he examiner should designate the *statutory basis* for any ground of rejection by express reference to a section of 35 U.S.C." (emphasis in original).

Ciurczak in View of Cunningham

Claims 1, 12, and 14 are not obvious over Ciurczak in view of Cunningham at least because the references, both alone and in combination, fail to disclose, teach, or suggest all of the claimed elements/limitations of claims 1, 12, and 14.

Claim 1 recites the following:

1. A method of using a medical diagnostic testing device, said method comprising:

obtaining a test result using said medical diagnostic testing device;

storing said test result in said medical diagnostic testing device; and

recording a voice message, associated with said test result, in said medical diagnostic test device.

Neither Ciurczak nor Cunningham disclose, teach, or suggest “recording a voice message... in [a] medical diagnostic test device.” The Examiner contends that this limitation is taught by Ciurczak’s disclosure of using “a voice recognition feature... as a transmission mechanism between a diabetic patient and a doctor.” Office Action at p. 3. However, Ciurczak appears to be directed to using voice recognition to decode verbal user comments in order for the information to be input into a doctor’s central computer. Further, the Examiner has provided no tenable explanation as to how using voice recognition as a “transmission mechanism” is equivalent to recording a voice message. Moreover, even if the use of voice recognition as disclosed in Ciurczak did involve recording, nowhere does Ciurczak disclose, teach, or suggest that such recording would be in a medical diagnostic test device, as opposed to, for example, the doctor’s central computer of Ciurczak. Furthermore, like Ciurczak, Cunningham is devoid of any teaching of recording a voice message. Accordingly, it is respectfully submitted that

claim 1 cannot be obvious over Ciurczak in view of Cunningham, since they fail to disclose, teach, or suggest “recording a voice message... in [a] medical diagnostic test device.”²

Claim 12 of the present application recites, “A medical diagnostic testing device, comprising: a testing system for obtaining a test result; a memory for storing said test result; and an audio system for recording a voice message associated with said test result.” Neither Ciurczak nor Cunningham disclose, teach, or suggest a medical diagnostic testing device that has “an audio system for recording a voice message[.]” As discussed above, nowhere does Ciurczak teach an audio system for recording a voice message, let alone an audio system for recording a voice message incorporated in a medical diagnostic testing device. Likewise, Cunningham does not teach a recording device. Consequently, it is respectfully submitted that claim 12 cannot be obvious over Ciurczak in view of Cunningham, since they fail to disclose, teach, or suggest “an audio system for recording a voice message[.]”

Claim 14 ultimately depends from claim 12 and therefore is not obvious over Ciurczak in view of Cunningham for at least the reason discussed above regarding claim 12.³

² While, as noted above, the Examiner has not identified a basis for the rejection of claims 2-11, in the interest of expediting prosecution, Applicants respectfully submit that since claims 2-11 ultimately depend from claim 1, claims 2-11 are therefore not obvious over Ciurczak in view of Cunningham for at least the reason discussed above regarding claim 1.

³ While, as noted above, the Examiner has not identified a basis for the rejection of claims 13 and 15-24, in the interest of expediting prosecution, Applicants respectfully submit that since claims 13 and 15-24 ultimately depend from claim 12, claims 13 and 15-24 are therefore not obvious over Ciurczak in view of Cunningham for at least the reason discussed above regarding claim 12.

Wilcox in View of Cunningham

Claims 25, 27, 29, and 30 are not obvious over Wilcox in view of Cunningham at least because the references, both alone and in combination, fail to disclose, teach, or suggest all of the claimed elements/limitations of claims 25. Claim 25 recites, "In a medical diagnostic testing device that obtains and stores test results, the improvement comprising: an audio system for recording a voice message associated with a test result." Applicants respectfully submit that claim 25 cannot be obvious over Wilcox in view of Cunningham because they do not disclose, teach, or suggest a medical diagnostic testing device having "an audio system for recording a voice message[.]"

Wilcox merely teaches the use of standard voice recognition software on a computer as a means for a medical professional to input information into a computer. Wilcox is generally directed to methods and apparatuses for outsourcing professional radiology interpretation to ensure high quality service, particularly after normal business hours at the site where the radiology study is obtained. See Wilcox ¶ [0001]. Nowhere does Wilcox specifically disclose an audio system for recording a voice message, let alone such a system incorporated in a medical diagnostic testing device. Wilcox does discuss using voice recognition, but only in disclosing that "[a]fter the interpretation of [a particular radiology] study is completed a formal report is created using industry standard computer based voice recognition software." Wilcox at ¶ [0009] (emphasis added). Disclosure of using industry standard voice recognition software on a computer is different, on its face, from a medical diagnostic testing device having an audio system for recording a voice message, and the Examiner has provided no tenable argument to

the contrary. Thus, Wilcox fails to disclose, teach, or suggest a medical diagnostic testing device that has “an audio system for recording a voice message[,]” as claimed.

The Examiner alleges that “Cunningham discloses... an audio system for recording a voice message associated with a test result (See at least ¶0101).” Office Action at p. 7. However, as noted above with respect to claim 12, Cunningham is devoid of any teaching of an audio system for recording a voice message. The Examiner cites “¶0101” of Cunningham, but Cunningham does not contain a ¶ [0101]. It appears the Examiner may have been pointing to ¶ [0101] of Ciurczak, as was cited elsewhere in the Office Action, but nowhere does the Office Action state that claim 25 is rejected as being obvious over Wilcox in view of Ciurczak. Notwithstanding this and in the interest of expediting prosecution, Applicants respectfully submit that claim 25 is not obvious over Wilcox in view of Ciurczak at least because Ciurczak, like Wilcox, fails to disclose, teach, or suggest a medical diagnostic testing device having “an audio system for recording a voice message[,]” as discussed above with respect to claim 12. Thus, since claim 25 is neither obvious over Wilcox in view of Cunningham, nor obvious over Wilcox in view of Ciurczak, the section 103(a) rejection of claim 25 should be withdrawn.

Because claims 27, 29, and 30 depend from claim 25, it is respectfully submitted that claims 27, 29, and 30 are allowable for at least the same reasons as claim 25, and that the section 103(a) rejection of claims 27, 29, and 30 should also be withdrawn.⁴

⁴ While, as noted above, the Examiner has not identified a basis for the rejection of claims 26 and 28, in the interest of expediting prosecution, Applicants respectfully submit that since claims 26 and 28 ultimately depend from claim 25, claims 26 and 28 are therefore neither obvious over Wilcox in view of Cunningham, nor obvious over Wilcox in view of Ciurczak for at least the reasons discussed above regarding claim 25.

Conclusion

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the claims in this Response, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification, abstract, or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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